

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JUAN ACEVEDO,

Petitioner,

-V-

JOHN B. LEMPKE,

Respondent.

10 Civ. 5285 (PAE) (HBP)

OPINION AND ORDER

PAUL A. ENGELMAYER, District Judge:

On May 1, 2010, petitioner Juan Acevedo filed this *pro se* petition for a writ of habeas corpus, pursuant to 28 U.S.C. § 2254. Dkt. 1. On July 22, 2010, Acevedo requested appointed counsel, stating that he does not speak or read English. Dkt. 3. On August 12, 2010, Judge William H. Pauley III, to whom this case was originally assigned, referred the action to Magistrate Judge Henry B. Pitman for the preparation of a Report and Recommendation pursuant to 28 U.S.C. § 636(b). Dkt. 4.

On October 14, 2010, Acevedo moved to (1) stay his petition while he exhausted certain claims in state court and (2) amend his petition to add those claims. Dkt. 5. On January 4, 2011, Judge Pauley denied Acevedo's request for pro bono counsel. Dkt. 6. On July 1, 2011, Magistrate Judge Pitman denied Acevedo's motion to stay and amend. Dkt. 8. On July 19, 2011, Acevedo renewed his motion to stay and amend. Dkt. 10. On October 13, 2011, this case was reassigned to my docket. Dkt. 13. On February 3, 2012, Judge Pitman once again denied Acevedo's motion to stay and amend. Dkt. 16. On February 28, 2012, Acevedo sought a certificate of appealability ("COA") with respect to Judge Pitman's Order dated February 3, 2012 denying his motion to stay and amend. Dkt. 17.

On October 24, 2013, Magistrate Judge Pitman issued two Reports and Recommendations to this Court, one regarding Acevedo's habeas petition (the "Habeas Report"), Dkt. 22, and a second regarding Acevedo's application for a certificate of appealability of the Order denying his motion to stay (the "Appealability Report"), Dkt. 23 (collectively, the "Reports"). The Reports stated that the parties were required to file any objections within 14 days from the date of the Report's issuance. *See* Habeas Report 36, Appealability Report 9–10. To date, the Court has received no objections.

DISCUSSION

In reviewing a Report and Recommendation, a district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). When specific objections are made, "[t]he district judge must determine *de novo* any part of the magistrate judge's disposition that has been properly objected to." Fed. R. Civ. P. 72(b)(3); *United States v. Male Juvenile*, 121 F.3d 34, 38 (2d Cir. 1997). To accept those portions of the report to which no timely objection has been made, "a district court need only satisfy itself that there is no clear error on the face of the record." *King v. Greiner*, No. 02 Civ. 5810 (DLC), 2009 WL 2001439, at *4 (S.D.N.Y. July 8, 2009) (citing *Wilds v. United Parcel Serv.*, 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003)); *see also Edwards v. Fischer*, 414 F. Supp. 2d 342, 346–47 (S.D.N.Y. 2006) (citation omitted).

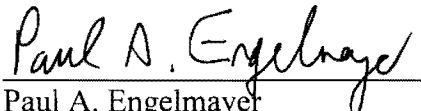
CONCLUSION

Careful review of the thorough and well-reasoned Reports reveals that there is no facial error in their conclusions. The Reports, which are incorporated by reference herein, are adopted without modification. The petition for habeas corpus and the application for a certificate of

appealability of the Order denying the motion to stay are both denied. The Clerk of Court is directed to close this case.

The parties' failure to file written objections precludes appellate review of this decision. *See Caidor v. Onondaga County*, 517 F.3d 601, 604 (2d Cir. 2008); *Small v. Sec'y of Health & Human Servs.*, 892 F.2d 15, 16 (2d Cir. 1989) (per curiam). The Court therefore declines to issue a certificate of appealability, and certifies that any appeal from this order would not be taken in good faith; therefore, *in forma pauperis* status is denied for the purpose of an appeal. *Coppedge v. United States*, 369 U.S. 438, 445 (1962).

SO ORDERED.


Paul A. Engelmayer
United States District Judge

Dated: January 14, 2014
New York, New York